

NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

Physician Licensure and Practice; Telemedicine
(LAC 46:XLV.408 and Chapter 75)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana state Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, as amended by Act 442 of the 2014 Regular Session of the Louisiana Legislature, the board intends to amend its rules governing the use of telemedicine as to patients who are located in this state, LAC 46:XLV.408 and 7501 et seq. The proposed changes make substantive and technical modifications and update the rules generally as made necessary by the passage of time. Among other items, the proposed changes: address the need and requirements for obtaining a telemedicine permit (§408); revise the scope of the Subchapter (§7501); incorporate certain revised definitions (§7503); identify: the need for a physician-patient relationship; the applicable standard of care; and location of the participants to telemedicine services (§7505); identify conditions prerequisite to practicing telemedicine and required disclosures (§7507); revise the requirements for patient records (§7509); provide only secure communication technology shall be used for telemedicine (§7510); impose certain requirements and limitations on the prescription of controlled substances by telemedicine, and provide for certain exceptions (§7513).

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter H. Restricted Licensure, Permits

§408. Telemedicine Permit Qualifications, Procedure, Issuance, Expiration and Renewal

A. Requirement for Permit/Qualifications. A physician who does not maintain a physical practice location in this state shall not engage in the practice of medicine in this state via telemedicine, as defined in Chapter 75 of these rules, unless he or she holds a telemedicine permit issued by the board. To be eligible for a telemedicine permit an applicant shall:

1. - 2. ...

3. have completed a board-approved application and satisfied the applicable fee.

B. - C. ...

D. Application. Application for a telemedicine permit shall be made in a format approved by the board and shall include:

1. ...

2. a description of how telemedicine will be used and the primary location(s) from which it will be utilized by the applicant;

3. an affirmation acceptable to the board, in a format prescribed by the board, that the applicant has an arrangement with one or more physicians, who maintain a physical practice location in this state, to accept patients on referral and for follow-up care. To be acceptable to the board the:

a. affirmation must be endorsed by the physicians subject to the arrangement and contain such contact and other information as the board may prescribe;

b. physician(s) with whom such arrangement is made shall:

i. possess an unrestricted license to practice medicine issued by the board;

ii. not be the subject of any cause, action or investigation identified §408.B, which may provide the board cause to deny or refuse to issue a telemedicine permit; and

4. - 5. ...

6. a copy of the required disclosures to patients, identified in §7507 of these rules and such other information, acknowledgments and documentation as the board may require; and

7. a fee of \$300. The board may waive such fee in favor of an applicant who advises the board in writing that his or her use of telemedicine in this state shall be limited to the provision of voluntary, gratuitous medical services.

E. - F.3.b. ...

G. Permit Expiration, Renewal. A telemedicine permit shall expire annually on the expiration date stated thereon or the last day of the month in which the licensee was born, whichever is the later, unless renewed by the submission of a renewal application containing such information as the board may require, together with a renewal fee of \$200.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009), amended LR 41:

Subpart 3. Practice

Chapter 75. Telemedicine

Subchapter A. General Provisions

§7501. Scope of Subchapter

A. The rules of this Subchapter govern the use of telemedicine by physicians licensed to practice medicine in this state and those who hold a telemedicine permit issued by the board to practice medicine in this state via telemedicine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009), amended LR 41:

§7503. Definitions

A. As used in this Chapter and in §408 of these rules, unless the content clearly states otherwise, the following words and terms shall have the meanings specified.

* * *

In-Person Visit—a face-to-face evaluation conducted by a physician who is at the same physical location as the patient.

* * *

Physical Practice Location in this State—a clinic, facility, office or other location physically located in this state, where the physician spends the majority of his or her time practicing medicine.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or a telemedicine permit duly issued by the board.

Physician-Patient Relationship—physicians utilizing telemedicine shall establish a proper *physician-patient relationship* by:

- a. verifying the identity of the individual requesting treatment. Appropriate contact and identifying information shall be made part of the medical record;
- b. conducting an appropriate examination. The examination does not require an in-person visit if the technology is sufficient to provide the physician the pertinent clinical information reasonably necessary to practice at an acceptable level of skill and safety;
- c. establishing a diagnoses through the use of accepted medical practices e.g., history, mental status, appropriate diagnostic and laboratory testing;
- d. discussing the diagnoses and risks and benefits of various treatment options;
- e. insuring the availability for appropriate follow-up care; and
- f. creating and/or maintaining a medical record.

Telemedicine—the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data by a physician using interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation, an electronic mail message between a physician and a patient, or a true consultation constitutes *telemedicine* for the purposes of this Part.

Telemedicine Permit—a permit issued by the board in accordance with §408 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7505. Patient Relationship; Standard of Care; Location of Participants

A. Physician-Patient Relationship. Telemedicine shall not be utilized by a physician with respect to any individual located in this state in the absence of a physician-patient relationship.

B. Standard of Care. The practice of medicine by telemedicine, including the issuance of any prescription via electronic means shall be held to the same prevailing and usually accepted standards of medical practice as those in traditional (face-to-face) settings. An online, electronic or written mail message, or a telephonic evaluation by questionnaire or otherwise, does not satisfy the standards of appropriate care.

C. Location of Participants. A physician using telemedicine may be at any location at the time the services

are provided. A patient receiving medical services by telemedicine may be in any location in this state at the time that the services are received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7507. Prerequisite Conditions; Disclosures

A. The practice of medicine is deemed to occur at the location of the patient. Therefore, no physician shall utilize telemedicine to provide medical services to patients located in this state unless the physician:

1. holds an unrestricted Louisiana medical license and maintains a physical practice location within this state; or
2. holds a telemedicine permit and executes an affirmation, as describe in §408 of these rules, that he or she has an arrangement with one or more other physicians who maintain a physical practice location in this state to provide for referrals and follow-up care.

B. A physician utilizing telemedicine with respect to patients located in this state shall have:

1. access to the patient's medical record;
2. if required by the standard of care applicable to the diagnosis or treatment of the patient's complaints in a traditional (face-to-face) setting, the ability:
 - a. to utilize peripherals (such as otoscope and stethoscope);
 - b. to obtain diagnostic testing;
 - c. if necessary in the physician's judgment, to access a patient presenter to assist with the telemedicine encounter; and
 - d. to conduct an in-person visit, or refer the patient to another physician for that purpose.

C. Disclosures. Prior to utilizing telemedicine a physician shall insure that the following disclosures have been made to the patient and documented in the medical record. Such disclosures need not be made or documented more than once, except to update the information provided:

1. the name, Louisiana medical license number and contact information (address, telephone number(s) and e-mail address) of the physician;
2. the physician's specialty or area of practice;
3. how to receive follow-up and emergency care;
4. how to obtain copies of medical records and/or insure transmission to another medical provider;
5. how to receive care in the event of a technology or equipment failure; and
6. notification of privacy practices concerning individually identifiable health information, consistent with state and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7509. Patient Records

A. Patient records shall be:

1. created and maintained for every telemedicine visit according to the same standards of care as in an in-person visit;

2. confidential and subject to all applicable state and federal laws and regulations relative to privacy and security of health information;

3. accessible by a patient and the physician consistent with all state and federal laws and regulations; and

4. made immediately available to the patient or a physician to whom the patient may be referred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7510. Privacy and Security

A. Only secure communication technology shall be used for telemedicine. At a minimum, telemedicine technology shall comply with all state and federal laws and regulations for medical/health information privacy and security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§7513. Prohibitions

A. No physician shall authorize or order the prescription, dispensation or administration of any controlled substance or other drug by telemedicine other than in compliance with the rules of this Chapter and all state and federal laws and regulations.

B. No physician shall utilize telemedicine:

1. - 2. ...

3. to authorize or order the prescription, dispensation or administration of any medication classified as a Schedule II controlled substance or an amphetamine or opioid of any schedule;

4. to authorize or order the prescription, dispensation or administration of any controlled substance (other than a Schedule II controlled substance or an amphetamine or opioid) unless the physician has had at least one in-person visit with the patient at a physical practice location in this state within the past year.

C. Exceptions. The following exceptions are recognized to the prohibitions set forth in §7513.B.3 and/or §7513.B.4.

1. Amphetamines. The prohibition against the prescription of an amphetamine and the requirement for an in-person visit within the past year, shall not apply to a psychiatrist who prescribes amphetamines in the treatment of his or her patients suffering from attention deficit hyperactivity disorder (ADHD), provided all of the following conditions are satisfied:

a. the patient is under the age of 18;

b. the patient is being treated at a clinic or facility operated by the state of Louisiana or a behavioral health center operated by the department or a local governmental entity;

c. there is a policy in place for referral for an in-person visit with a primary care physician in this state if deemed necessary by the psychiatrist; and

d. such is permitted by and in conformity with all applicable state and federal laws and regulations including, but not limited to, the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Pub. L. 110-425) and any corresponding regulations that may be adopted by the United States Drug Enforcement Administration.

2. Buprenorphine-Naloxone Preparations. The prohibition against the prescription of an opioid shall not apply to a psychiatrist who is board certified in the subspecialty of addictive medicine from using buprenorphine-naloxone preparations in the treatment of an addictive disorder, provided all of the following conditions are satisfied:

a. the patient is being treated at a physician's office or addiction treatment center within this state;

b. the patient has had at least one in-person visit with the addiction medicine specialist within the past six months;

c. there is a policy in place for referral for an in-person visit with a physician in this state if deemed necessary by the addiction medicine specialist; and

d. such is permitted by and in conformity with all applicable state and federal laws and regulations.

D. A physician who practices telemedicine by virtue of a telemedicine permit issued by the board shall not:

D.1. - E.

F. No physician shall utilize telemedicine to provide care to a patient who is physically located outside of this state, unless the physician possesses lawful authority to do so by the licensing authority of the state in which the patient is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009), amended LR 41:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below 100 percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or

overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendment to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., November 19, 2014.

Public Hearing

If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on November 24, 2014, at 9 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held. A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Cecilia Mouton, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Physician Licensure and Practice; Telemedicine

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than one-time costs for notice and rule publication estimated at a total of \$1,156 in FY 15, it is not anticipated that the proposed rule changes will result in any additional costs or savings to the board or other state or local governmental units. The board anticipates devoting some existing administrative staff resources to processing portions of telemedicine permit applications/renewals (for physicians who do not maintain a physical practice location in this state); affirming an arrangement with another physician(s) who maintains a physical practice location in Louisiana to accept patients for referral/follow-up care; and requiring a copy of the physician's written disclosures to patients. Because the number of current permit holders is small, and the anticipated total of those who may seek a permit is believed to be relatively modest, these portions of the applications will be processed within existing systems for permit issuance/renewal. The board anticipates it can absorb the projected modest increase in administrative workload with existing personnel and resources. The proposed Rule changes are necessary to conform the board's existing telemedicine Rules to Act 442 of the 2014 Regular Session of the Louisiana Legislature, to update the Rules generally and incorporate substantive and technical changes made necessary by the passage of time.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed changes will generate additional fees of \$150 for issuance of an initial telemedicine permit and \$100 for permit renewal. Twenty-five physicians currently hold telemedicine permits. The board anticipates these permits will be renewed in the current fiscal year. While

the board has no reliable data, 30 new applicants for a telemedicine permit are projected in the current fiscal year and for each of the next several years. It is estimated that additional agency revenue from initial/renewal telemedicine permits will total: \$7,000 for FY 2015 (30 new permits x \$150 = \$4,500, 25 renewal permits x \$100 = \$2,500. Total additional revenues = \$7,000); \$10,000 in FY 16 (30 new permits x \$150 = \$4,500, 55 renewal permits x \$100 = \$5,500. Total additional revenues = \$10,000); and \$13,000 in FY 17 (30 new permits x \$150 = \$4,500, 85 renewal permits x \$100 = \$8,500. Total additional revenues = \$13,000). The board does not anticipate an appreciable increase in the number of new applicants in forthcoming years. Additional annual revenues will be utilized to off-set the board's general operating expenses.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed changes will affect: out-of-state physicians who already possess a telemedicine permit to the extent that any do not already have a referral arrangement with a physician who maintains a physical practice location in this state; all physicians who use telemedicine technology which does not comply with state and federal laws and regulations for medical/health information privacy and security; and, potentially those that prescribe certain types of controlled substances by telemedicine. The current fees for permit issuance/renewal are \$150/\$100, respectively. The proposed changes will increase fees to \$300 at issuance and \$200 at renewal. The proposed changes remove the requirements for support staff and the presence of a licensed health care professional with the patient during all telemedicine encounters.

Because there is no information or data available either as to the number of physicians who utilize telemedicine in their practice or the extent to which those that may/may not already comply with the proposed changes, it is not possible to estimate the proposed changes' impact in these respects. To an extent not quantifiable, the public will receive an economic benefit by enhanced access to medical services via telemedicine from both Louisiana-licensed physicians and out-of-state physicians possessing a telemedicine permit. The proposed changes may also, to an extent not quantifiable, increase receipts and/or income of physicians who utilize telemedicine.

The proposed rules also require physicians to disclose privacy and other practices to new patients in a format specified by the board. It is believed that most physicians already use some form of disclosure that would substantially satisfy most if not all of the required information. Therefore, the board does not anticipate that this requirement will have a material effect on paperwork or workload on affected physicians.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of the proposed changes may, to an extent not quantifiable, have a positive impact on competition or employment in either the public or private sector.

Celia Mouton, M.D.
Executive Director
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John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office